

1 THE HONORABLE JOHN C. COUGHENOUR  
2  
3  
4  
5  
6  
7

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

8 JON FLOWERS,  
9  
10

Plaintiff,

v.

11 FRED HUTCHINSON CANCER  
12 RESEARCH CENTER,

13 Defendant.  
14

CASE NO. C17-0989-JCC

15 STIPULATED PROTECTIVE  
16 ORDER

Pursuant to the parties' Stipulated Motion for Protective Order (Dkt. No. 17), the Court  
ORDERS as follows:

17 1. PURPOSES AND LIMITATIONS

18 Discovery in this action is likely to involve production of confidential, proprietary, or  
19 private information for which special protection may be warranted. Accordingly, the parties  
20 hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The  
21 parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket  
22 protection on all disclosures or responses to discovery, the protection it affords from public  
23 disclosure and use extends only to the limited information or items that are entitled to  
24 confidential treatment under the applicable legal principles, and it does not presumptively entitle  
parties to file confidential information under seal.

PROTECTIVE ORDER  
C17-0989-JCC – Page 1

1

2. “CONFIDENTIAL” MATERIAL

2 “Confidential” material shall include the following documents and tangible things produced  
3 or otherwise exchanged:  
4 (a): Personnel files of non-parties;  
5 (b): Investigations into claims of discrimination by other employees of Defendant;  
6 (c): Defendant’s EEO-1 filings;  
7 (d): Plaintiff’s medical records; and  
8 (e): Defendant’s financial information.

9

10 3. SCOPE

11 The protections conferred by this agreement cover not only confidential material (as  
12 defined above), but also (1) any information copied or extracted from confidential material; (2)  
13 all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,  
14 conversations, or presentations by parties or their counsel that might reveal confidential material.  
15 However, the protections conferred by this agreement do not cover information that is in the  
16 public domain or becomes part of the public domain through trial or otherwise.

17

18 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

19 4.1 Basic Principles. A receiving party may use confidential material that is disclosed  
20 or produced by another party or by a non-party in connection with this case only for prosecuting,  
21 defending, or attempting to settle this litigation. Confidential material may be disclosed only to  
22 the categories of persons and under the conditions described in this agreement. Confidential  
23 material must be stored and maintained by a receiving party at a location and in a secure manner  
24 that ensures that access is limited to the persons authorized under this agreement.

1       4.2     Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise  
2 ordered by the Court or permitted in writing by the designating party, a receiving party may  
3 disclose any confidential material only to:

4                 (a) the receiving party’s counsel of record in this action, as well as employees of  
5 counsel to whom it is reasonably necessary to disclose the information for this litigation;

6                 (b) the officers, directors, and employees (including in house counsel) of the  
7 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties  
8 agree that a particular document or material produced is for Attorney’s Eyes Only and is so  
9 designated;

10                 (c) experts and consultants to whom disclosure is reasonably necessary for this  
11 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

12                 (d) the Court, court personnel, and court reporters and their staff;

13                 (e) copy or imaging services retained by counsel to assist in the duplication of  
14 confidential material, provided that counsel for the party retaining the copy or imaging service  
15 instructs the service not to disclose any confidential material to third parties and to immediately  
16 return all originals and copies of any confidential material;

17                 (f) during their depositions, witnesses in the action to whom disclosure is  
18 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”  
19 (Exhibit A), unless otherwise agreed by the designating party or ordered by the Court. Pages of  
20 transcribed deposition testimony or exhibits to depositions that reveal confidential material must  
21 be separately bound by the court reporter and may not be disclosed to anyone except as permitted  
22 under this agreement;

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

4.3 Filing Confidential Material. Before filing confidential material or discussing or referencing such material in court filings, the filing party shall confer with the designating party to determine whether the designating party will remove the confidential designation, whether the document can be redacted, or whether a motion to seal or stipulation and proposed order is warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the Court to file material under seal.

## 5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party or non-party that designates information or items for protection under this agreement must take care to limit any such designation to specific material that qualifies under the appropriate standards. The designating party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify, so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this agreement.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to unnecessarily encumber or delay the case development process or to impose unnecessary expenses and burdens on other parties) expose the designating party to sanctions.

1        If it comes to a designating party's attention that information or items that it designated for  
2 protection do not qualify for protection, the designating party must promptly notify all other  
3 parties that it is withdrawing the mistaken designation.

4        5.2        Manner and Timing of Designations. Except as otherwise provided in this  
5 agreement (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or  
6 ordered, disclosure or discovery material that qualifies for protection under this agreement must  
7 be clearly so designated before or when the material is disclosed or produced.

8                (a) Information in documentary form: (e.g., paper or electronic documents and  
9 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),  
10 the designating party must affix the word "CONFIDENTIAL" to each page that contains  
11 confidential material. If only a portion or portions of the material on a page qualifies for  
12 protection, the producing party also must clearly identify the protected portion(s) (e.g., by  
13 making appropriate markings in the margins).

14                (b) Testimony given in deposition or in other pretrial or trial proceedings: the  
15 parties must identify on the record, during the deposition, hearing, or other proceeding, all  
16 protected testimony, without prejudice to their right to so designate other testimony after  
17 reviewing the transcript. Any party or non-party may, within fifteen days after receiving a  
18 deposition transcript, designate portions of the transcript, or exhibits thereto, as confidential.

19                (c) Other tangible items: the producing party must affix in a prominent place on  
20 the exterior of the container or containers in which the information or item is stored the word  
21 "CONFIDENTIAL." If only a portion or portions of the information or item warrant protection,  
22 the producing party, to the extent practicable, shall identify the protected portion(s).

1       5.3       Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
2 designate qualified information or items does not, standing alone, waive the designating party's  
3 right to secure protection under this agreement for such material. Upon timely correction of a  
4 designation, the receiving party must make reasonable efforts to ensure that the material is  
5 treated in accordance with the provisions of this agreement.

6       6.       CHALLENGING CONFIDENTIALITY DESIGNATIONS

7       6.1       Timing of Challenges. Any party or non-party may challenge a designation of  
8 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality  
9 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
10 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to  
11 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
12 original designation is disclosed.

13       6.2       Meet and Confer. The parties must make every attempt to resolve any dispute  
14 regarding confidential designations without court involvement. Any motion regarding  
15 confidential designations or for a protective order must include a certification, in the motion or in  
16 a declaration or affidavit, that the movant has engaged in a good faith meet and confer  
17 conference with other affected parties in an effort to resolve the dispute without court action. The  
18 certification must list the date, manner, and participants to the conference. A good faith effort to  
19 confer requires a face-to-face meeting or a telephone conference.

20       6.3       Judicial Intervention. If the parties cannot resolve a challenge without court  
21 intervention, the designating party may file and serve a motion to retain confidentiality under  
22 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of  
23 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those  
24 PROTECTIVE ORDER  
C17-0989-JCC – Page 6

1 made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on  
2 other parties) may expose the challenging party to sanctions. All parties shall continue to  
3 maintain the material in question as confidential until the court rules on the challenge.

4       7. **PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER**  
5       **LITIGATION**

6       If a party is served with a subpoena or a court order issued in other litigation that compels  
7 disclosure of any information or items designated in this action as "CONFIDENTIAL," that  
8 party must:

9               (a) promptly notify the designating party in writing and include a copy of the  
10 subpoena or court order;

11               (b) promptly notify in writing the party who caused the subpoena or order to issue  
12 in the other litigation that some or all of the material covered by the subpoena or order is subject  
13 to this agreement. Such notification shall include a copy of this agreement; and

14               (c) cooperate with respect to all reasonable procedures sought to be pursued by  
15 the designating party whose confidential material may be affected.

16       8. **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

17       If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential  
18 material to any person or in any circumstance not authorized under this agreement, the receiving  
19 party must immediately (a) notify in writing the designating party of the unauthorized  
20 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c)  
21 inform the person or persons to whom unauthorized disclosures were made of all the terms of this  
22 agreement, and (d) request that such person or persons execute the "Acknowledgment and  
23 Agreement to Be Bound" that is attached hereto as Exhibit A.

1       9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
2       MATERIAL

3       When a producing party gives notice to receiving parties that certain inadvertently  
4       produced material is subject to a claim of privilege or other protection, the obligations of the  
5       receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This  
6       provision is not intended to modify whatever procedure may be established in an e-discovery  
7       order or agreement that provides for production without prior privilege review. Parties shall  
8       confer on an appropriate non-waiver order under Fed. R. Evid. 502.

9       10. NON TERMINATION AND RETURN OF DOCUMENTS

10       Within 60 days after the termination of this action, including all appeals, each receiving  
11       party must return all confidential material to the producing party, including all copies, extracts  
12       and summaries thereof. Alternatively, the parties may agree upon appropriate methods of  
13       destruction.

14       Notwithstanding this provision, counsel are entitled to retain one archival copy of all  
15       documents filed with the court, trial, deposition, and hearing transcripts, correspondence,  
16       deposition and trial exhibits, expert reports, attorney work product, and consultant and expert  
17       work product, even if such materials contain confidential material.

18       The confidentiality obligations imposed by this agreement shall remain in effect until a  
19       designating party agrees otherwise in writing or a court orders otherwise.

20       //

21       //

22       //

23       //

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 DATED: 8/22/2017

3 s/ Peter Montine

4 Aaron V. Rocke, WSBA No. 31525  
5 Peter Montine, WSBA No. 49815  
6 Rocke Law Group, PLLC  
7 101 Yesler Way, Suite 63  
Seattle, WA 98104  
(206) 652-8670  
[aaron@rockelaw.com](mailto:aaron@rockelaw.com)  
[peter@rockelaw.com](mailto:peter@rockelaw.com)  
8 Attorneys for Plaintiff

9 DATED: 8/21/2017

10 s/ D. Michael Reilly approved via 8/21/2017 email

11 D. Michael Reilly, WSBA No. 14674  
12 Justin A. Okun  
13 Lane Powell PC  
14 1420 5<sup>th</sup> Ave #4200  
Seattle, WA 98101  
(206) 223-7051  
[reillym@lanepowell.com](mailto:reillym@lanepowell.com)  
[okunj@lanepowell.com](mailto:okunj@lanepowell.com)  
15 Attorneys for Defendant

16 //

17 //

18 //

19 //

20 //

21 //

22 //

23 //

1 PURSUANT TO STIPULATION, IT IS SO ORDERED.  
2  
3  
4  
5  
6  
7

8 DATED this 2nd day of November, 2017.  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26



John C. Coughenour  
UNITED STATES DISTRICT JUDGE

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**EXHIBIT A**  
**ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND**

I, \_\_\_\_\_ [*FULL NAME*], of \_\_\_\_\_  
[*FULL ADDRESS*], declare under penalty of perjury that I have read in its entirety and  
understand the Stipulated Protective Order that was issued by the United States District Court for  
the Western District of Washington on \_\_\_\_\_, 2017, in the case of **Jon Flowers v. Fred**  
**Hutchinson Cancer Research Center, Case No. 2:17-cv-00989-JCC**. I agree to comply with  
and to be bound by all the terms of this Stipulated Protective Order and I understand and  
acknowledge that failure to so comply could expose me to sanctions and punishment in the  
nature of contempt. I solemnly promise that I will not disclose in any manner any information or  
item that is subject to this Stipulated Protective Order to any person or entity except in strict  
compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the  
Western District of Washington for the purpose of enforcing the terms of this Stipulated  
Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: \_\_\_\_\_, 20\_\_.

City and State where sworn and signed: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Signature: \_\_\_\_\_